

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JIMMIE L. MCRAE,

Plaintiff,

-v.-

9:02-CV-291  
(GLS)(RFT)

KATHLEEN REYNOLDS, as Executrix of the  
Estate of Edward F. Reynolds, deceased,

Defendants.  
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APPEARANCES:

OF COUNSEL:

JIMMIE L. MCRAE

*Pro Se*

95-B-0784

Mid-State Correctional Facility

P.O. Box 2500

Marcy, New York 13403-2500

HON. ELIOT SPITZER

New York State Attorney General

The Capitol

Albany, NY 12224

JAMES SEAMAN

Assistant Attorney General

GARY L. SHARPE, U.S. DISTRICT JUDGE

**ORDER**

This action was commenced by Jimmie L. McRae on February 28, 2002.

McRae's death was suggested on the record by a notice filed January 3, 2006 by the Office of the New York State Attorney General. *See Dkt. No. 59.* The notice was accompanied by McRae's death certificate and a declaration of service stating that the Suggestion of Death under 25(a) of the Federal Rules of Civil Procedure was served upon McRae's representative as listed on his death certificate.<sup>1</sup>

FED. R. CIV. P. 25(a) sets forth the procedure to be followed for the substitution of

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<sup>1</sup>Joe McRae is named as McRae's [representative] on his death certificate, he resides at 920 Hawley Avenue, Syracuse, NY 13203. *Dkt. No. 59.*

parties upon the death of a party. Rule 25(a)(1) provides that a motion for substitution may be filed by any party or by the "successors or representatives of the deceased party." FED. R. CIV. P. 25(a). If a motion for substitution is not filed within "ninety days after the death of a party has properly been suggested upon the record...the action shall be dismissed as to the deceased party." *Id.*

It has been more than ninety days since defendant's counsel filed the suggestion of death on the record. See *Dkt. No. 59*. During such time, no person has filed a motion for substitution nor requested an extension of time to file a motion for substitution. Therefore, this case must be dismissed for failure to prosecute.

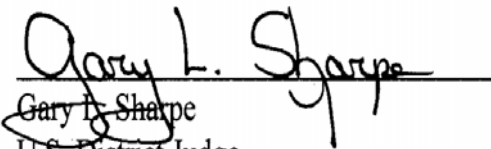
WHEREFORE, it is hereby

ORDERED, that this case be dismissed for failure to prosecute, and it is further

ORDERED, that the Clerk serve a copy of this Order on McRae's representative, and the defendant by regular mail.

IT IS SO ORDERED.

Dated: June 1, 2006  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge